Supreme Court, U.S.
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No. 96-137

IN THE

Supreme Court of the United States

October Term, 1995

THE STATE OF FLORIDA,

Petitioner,

v.

JUAN SOCA

Respondent.

REPLY TO BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

WHEN CONTRABAND IS LAWFULLY SEIZED FROM A PROBATIONER, BASED ON A "SPECIAL NEEDS" SEARCH, IS THAT EVIDENCE ADMISSIBLE AGAINST THE PROBATIONER IN BOTH THE PROBATION REVOCATION HEARING AND THE TRIAL ON THE SUBSTANTIVE CRIMINAL CHARGE.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

REASONS FOR GRANTING THE WRIT 1

THE DECISION OF THE COURT BELOW WAS DECIDED ON FEDERAL GROUNDS AND NOT UPON ADEQUATE AND INDEPENDENT STATE GROUNDS 1

CONCLUSION 3

TABLE OF AUTHORITIES

Cases	*Page*
ASARCO Inc. v. Kadish, 490 U.S. 605, 109 S.Ct. 2037, 104 L. Ed. 2d 696 (1989)	2
Bernie v. State, 524 So. 2d 988 (Fla. 1988)	2
Perez v. State, 620 So. 2d 1256 (Fla. 1993)	2
State v. Lavazzoli, 434 So. 2d 321 (Fla. 1983)	2

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REASON FOR GRANTING THE WRIT

THE DECISION OF THE COURT BELOW WAS DECIDED ON FEDERAL GROUNDS AND NOT UPON ADEQUATE AND INDEPENDENT STATE GROUNDS.

The Respondent contends that the decision of the Supreme Court of Florida in the instant case rests on adequate and independent state law grounds and therefore this Court lacks jurisdiction over the cause. This position is totally devoid of merit since Florida's exclusionary rule is linked to the federal exclusionary rule and is not based on the independent protective force of state law.

In 1982, Article I, § 12 of the Florida Constitution, relating to search and seizure, was amended to include the "conform-

ity clause" which requires that the rights provided by said section be construed in conformity with the Fourth Amendment to the Unites States Constitution, as interpreted in all past and future decisions, by this Court. *Perez v. State,* 620 So. 2d 1256 (Fla. 1993). Florida's exclusionary rule is now the federal one which exists by judicial decisions and is controlled by decisions from this Court. *Bernie v. State,* 524 So. 2d 988 (Fla. 1988).

In *State v. Lavazzoli,* 434 So. 2d 321 (Fla. 1983) the Supreme Court of Florida for the first time addressed the impact that the amendment to Article I, § 12 of the Florida Constitution had on Florida's exclusionary rule. The Court recognized that prior to the amendment the right of a citizen of the State of Florida to be free from unreasonable searches and seizures was guaranteed independently of the similar protection provided by the Fourth Amendment to the United States Constitution. Under Article I, § 12 as it existed prior to the amendment, the Court stated that the courts of Florida were free to provide its citizens with a higher standard of protection from governmental intrusion than that afforded by the federal constitution. The reason for that position was that Florida's exclusionary rule was specifically articulated in the state constitution and was a part of Florida's organic law. The Court noted that the federal exclusionary rule is preeminently a rule of court. The Court then held the new amendment links Florida's exlusionary rule to the federal exclusionary rule, making Florida's exclusionary rule nothing more than a creature of judicial decisional policy. The Supreme Court of Florida then explicitly held that the amendment removed the independent protective force of state law from Florida's exclusionary rule. *Id.* at 324–325.

Since Florida's exclusionary rule is controlled by the federal exclusionary rule, the Supreme Court of Florida's references to Article I, § 12 of the Florida Constitution reflect a holding which rests on the state court's interpretation of the Fourth Amendment. *ASARCO Inc. v. Kadish,* 490 U.S. 605, 109 S.Ct. 2037, 104 L. Ed. 2d 696 (1989)(Where the Arizona

Supreme Court described a section of the Arizona Constitution as simply a "rescript" of a federal statute, the decision did not rest on independent state grounds). What actually occurred herein was that when the Supreme Court of Florida did not find any cases from this Court directly on point, it acted like any other federal court of appeal and interpreted the Fourth Amendment in a manner it believed this Court would rule on the facts herein. Therefore, this Court has jurisdiction to determine the conflict in Fourth Amendment jurisprudence created by the instant decision of the Supreme Court of Florida.

CONCLUSION

Based on the foregoing reasons stated herein and in the initial Petition, the Petitioner, the State of Florida, respectfully requests that this Court grant its Petition for a Writ of Certiorari to the Supreme Court of Florida and summarily reverse the Supreme Court of Florida based on the authorities herein and previously cited.

Respectfully submitted,

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